

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

PAULINE MONTGOMERY,

Plaintiff,

v.

CDCR CORRECTIONS OFFICER, *et al.*,

Defendants.

Case No. 1:23-cv-00439-ADA-BAM (PC)

ORDER VACATING FINDINGS AND
RECOMMENDATIONS
(ECF No. 10)

ORDER GRANTING EXTENSION OF TIME
TO FILE SIGNED COMPLAINT AND
APPLICATION TO PROCEED *IN FORMA*
PAUPERIS (OR PAY FILING FEE)

THIRTY (30) DAY DEADLINE

Plaintiff Pauline Montgomery (“Plaintiff”) is a state prisoner and former county jail inmate proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

On March 24, 2023, the Court ordered Plaintiff to file an application to proceed *in forma pauperis*, completed and signed, including a certified copy of her trust account statement for the past six months, or in the alternative, to pay the \$402.00 filing fee for this action. (ECF No. 3.) Plaintiff was also directed to file a signed complaint, not to exceed 25 pages in length, or a notice of voluntary dismissal. (*Id.*) Following the filing of Plaintiff’s April 24, 2023 notice of change of address, (ECF No. 6), and May 8, 2023 motion for extension of time, (ECF No. 7), the Court extended the deadline to June 12, 2023.

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1 Although Plaintiff filed another notice of change of address on June 9, 2023, (ECF No. 9),
2 she did not file a signed complaint or an application to proceed *in forma pauperis*, or pay the
3 filing fee for this action. Accordingly, on June 28, 2023, the undersigned issued findings and
4 recommendations to dismiss this action, without prejudice, for failure to obey court orders and
5 failure to prosecute. (ECF No. 10.) Plaintiff was directed to file any objections to the findings
6 and recommendations within fourteen (14) days. (*Id.*)

7 Currently before the Court are Plaintiff's objections to the findings and recommendations,
8 filed July 20, 2023. (ECF No. 12.) Plaintiff states that she mailed a signed complaint and *in*
9 *forma pauperis* application on April 25, 2023, but the documents were mailed back to her by the
10 Clerk of the Court with instructions to E-File at her facility. On May 4, 2023, she was still
11 waiting for her facility to provide E-Filing forms. Plaintiff states that she sent a letter to the Court
12 on May 14, 2023 to ask for a longer extension of time because she was trying to obtain forms that
13 were not available at the time, she was in the process of a transfer, and some officers were
14 refusing to sign for her legal mail to be sent out. Plaintiff states that she did not receive a
15 response to this request, and she was waiting for that response before mailing the documents due
16 on June 12. Plaintiff therefore requests permission to file another complaint. (*Id.*)

17 Having considered Plaintiff's motion, the Court finds it appropriate to vacate the pending
18 findings and recommendations. Plaintiff's motion for an extension of time to file her signed
19 complaint and application to proceed *in forma pauperis* (or pay the filing fee) is granted.

20 Accordingly, IT IS HEREBY ORDERED that:

- 21 1. The findings and recommendations issued on June 28, 2023, (ECF No. 10), are
22 VACATED;
- 23 2. The Clerk of the Court is directed to serve this order, a blank *in forma pauperis*
24 application for a prisoner, and a civil rights complaint form on Plaintiff;
- 25 3. Within **thirty (30) days** from the date of service of this order, Plaintiff SHALL file:
 - 26 a. The attached application to proceed *in forma pauperis*, completed and signed,
27 including a certified copy of her trust account statement for the past six months, or
28 in the alternative, pay the \$402.00 filing fee for this action; **and**

b. A signed complaint, **not to exceed 25 pages in length**, or a notice of voluntary dismissal; and

4. **Plaintiff is warned that the failure to comply with this order will result in dismissal of this action, without prejudice.**

IT IS SO ORDERED.

Dated: **July 21, 2023**

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE